(ii) that the Defendants should remove their septic tank from the Plaintiff's land;

(iii) that the Defendants should refrain whether by themselves or their servants or agents or otherwise from doing the following acts or any of them that is to say erecting or re-erecting buildings on their land in such a manner as to encroach onto the Plaintiff's land.

I further order that the Defendants should pay to the Plaintiff the cost on his claim.

Claim allowed.
Counterclaim dismissed.

Solicitors: *T. Ariarajah & Co.; Ambiavagar & Co.*

ROY R. MUTTIAH v. HAJI MOHAMED ZUKI & ANOR.

[O.C.J. (Shaik Daud J.), December 30, 1983]
[Kuantan – Civil Suit No. 254 of 1982]

Legal Profession – Solicitors – Dispute between solicitors – Defendants withholding documents – Whether reasonable – Order for delivery.

The plaintiff applied for an order for the delivery of certain documents (land titles and transfers) by the defendants. He deposed that at all times since June 1977 he had been the partner of the defendants holding 70% shares of the partnership of Zuki Gandhi & Amin, Temerloh & Mentakab offices. When he returned from holidays abroad in September 1982, he was denied entry to the two offices and the defendants took possession of every article therein, including personal articles. He also deposed that they took possession of land Grant No. 5191 for land which he personally purchased. Just before leaving for his holidays, the plaintiff had in turn sold this piece of land to certain purchasers and a transfer was executed after which he left instructions with his staff to proceed with the necessary acts of transfer. The second defendant took possession of the title and transfers. The defendants also took possession of land title GM 209 for land in respect of which the plaintiff acted as solicitor in its sale and purchase.

The defendants opposed the handing over of the documents. They contended that, in respect of Grant No. 5191, a probable offence under the Penal Code was alleged to have been committed by the plaintiff when he was a partner of the defendant firm and the relevant documents might be required by the police in their investigation. As regards GM 209, the defendants contended that the plaintiff had no *locus standi.*

Held, allowing the application: (1) on Grant 5191, the reason given by the defendants was untenable and weak. It was not really necessary for the police to get hold of the original documents for the purpose of their investigation as photostat copies of the documents would have sufficed until the criminal matter is tried in court;

(2) on GM 209, by handing over the documents, the position of the defendants would in no way be affected. On the other hand, the unreasonable refusal by the defendants had affected the rights of third parties;

(3) in the event, the defendants had acted unreasonably and in bad faith and were directed to hand over all the documents concerned to the plaintiff's solicitor within 7 days from service of the order.

SUMMONS-IN-CHAMBERS.

Mahinder Singh for the plaintiff.
S. Subramanian for the defendants.

Cur. Adv. Vult.

Shaik Daud J.: The plaintiff filed this Summons-in-Chambers for an order that:–

1. The defendants forthwith deliver the title to the land held under Grant No. 5191 Lot 27 Section 7 Bandar Mentakab to the Plaintiff.

2. The Defendants do forthwith deliver the Memorandum of Transfers of the land held under Grant No. 5191 Lot 27 Section 7 Bandar Mentakab from R. Sethu to the Plaintiff and from the Plaintiff to Pandurangen and 9 others to the Plaintiff.

3. The defendants do forthwith deliver the title to the land held under GM 209 Lot 1510 Mukim of Pedah to the Plaintiff.

4. The Defendants do forthwith deliver the Memorandum of Transfer of the land held under GM 209 Lot 1510 Mukim of Pedah from Tan Khai Mun to Messrs Lean Wah Sdn. Bhd.

5. The defendants do forthwith deliver the Bank Statement, cheque butts, vouchers, disbursements records, ledgers, cash books and such other necessary records as and when requested of the Temerloh and Mentakab offices of Messrs Zuki Gandhi & Amin in respect of the office and clients account for the years 1981 and 1982.

This application is supported by the affidavit of the plaintiff, Mr. Roy R. Muttiah, who deposed that at all times since June 1977 he had been the partner of the defendants holding 70% shares of the partnership of Messrs Zuki Gandhi & Amin, Temerloh & Mentakab offices. Upon his return from holidays abroad in September 1982 the plaintiff found himself being denied entry

to the said two offices and the defendants took possession of every article therein including personal articles. The plaintiff also deposed that the defendants took possession of Grant No. 5191 Lot 27 Section 7 Bandar Mentakab in respect of land which the plaintiff personally purchased. Just before leaving for his holidays plaintiff had in turn sold the said land to one Pandurangen and 9 others and a memorandum of transfer was executed after which plaintiff left instructions with his staff to present the documents for adjudication of stamp duty and to proceed with the necessary acts of transfer. During the plaintiff's absence the second defendant took possession of the title and in spite of repeated demands refused to proceed with the transfer and also refused to allow plaintiff to do so.

The plaintiff also deposed that in respect of land held under GM 209 Lot 1510 Mukim of Pedah he acted as solicitor in its sale by one Mr. Tan Khai Mun to M/s Lian Wah Holdings Sdn. Bhd. Both the title and memorandum of transfer have been taken possession of by defendants and in spite of repeated demands they had refused to proceed with the transfer or allow plaintiff to do so.

In the course of the hearing both parties by consent came to a partial agreement and as a result I made the following order:—

"By consent as for paragraph 5 of the prayer defendant directed to deliver the items mentioned therein to the plaintiff's accountants M/s Hanafiah Raslan and Mohd. on 3.10.83 and the accountants to complete auditing and return same on or by 3.12.83 with liberty to apply for longer period, if need by."

Following this agreement only items 1 to 4 in the prayers are to be decided.

On perusing through the affidavit filed on behalf of the defendants by the second defendant it would appear that the defendants are opposing the handing over of both the titles and memoranda of transfers on two grounds. In respect of land grant No. 5191 Lot 27 Section 7 Bandar Mentakab, the defendants deposed that a probable offence under the Penal Code was alleged to have been committed by the plaintiff while he was a partner of the defendant firm. On this belief the defendants filed a police report vide Temerloh Report No. 3159 of 1982 on November 3, 1982 and that the police are investigating the report and as it is the belief of the defendants that the documents requested for by the plaintiff in prayers (1) and (2) "may be required by the police in their investigations" but at the same time they deposed that the defendants are prepared to deposit these documents in Court for safe custody pending police investigations.

I find that the reason given by the defendants is untenable and weak. Although police investigations appear to have commenced in June 1983 when they recorded the statement of the second defendant the police did not deem it fit to take possession of the documents concerned then. Even up to the date of the hearing of the application of September 27, 1983 the police still has not asked for or taken possession of these documents. In any case, for the purpose of police investigations it is not really necessary for them to get hold of the original documents as photostat copies of them would have sufficed until the criminal matter is to be tried in Court when summonses for their production can be issued.

In respect of GM 209 Lot 1510 Mukim Pedah, the defendants contend that the plaintiff has no *locus standi* in respect of them as he is neither the vendor nor the purchaser nor the solicitor for any of the parties concerned nor the stakeholder thereof. While it is true that plaintiff was neither the purchaser nor the vendor or stakeholder and that Syarikat Low & Lee claimed to act for Lean Wah Sdn. Bhd. but by a letter dated January 10, 1983 Mahinder & Co., the present solicitor for plaintiff, wrote to say that they are also acting for the land owner and this letter was ignored. In his affidavit, Mr. Roy R. Muttiah the plaintiff, says that he was at first representing the parties in the sale. I feel that the least the defendants could have done was to effect the transfer themselves if they do not wish to allow plaintiff or his solicitors to do so. I am of the view that by handing over these documents will in no way affect the position of the defendants or the dispute between them and the plaintiff. On the other hand, the unreasonable refusal to do so will and has affected the rights of third parties.

In the event, it is my judgment that the defendants have acted unreasonably and in bad faith. I therefore allow the application of the plaintiff as to prayers 1 to 4 and direct the defendants to hand over all the documents mentioned therein to the plaintiff's solicitor after having made photostat copies of them within 7 days from service of the order.

Order accordingly.

Solicitors: *Mahinder & Co.; S. Subramanian.*